



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: AJM Custom Built Inc.

File: B-234110

Date: March 16, 1989

DIGEST

1. Protest filed after bid opening contending that bid preparation period allotted by invitation for bids was too short to allow preparation of a competitive bid is untimely where protester had sufficient time to raise the issue before bid opening.

2. General Accounting Office will not consider a protest that the protester lost the competition because, in preparing its bid, the protester used several high quotations from potential subcontractors the protester now alleges colluded with the awardee to prevent the protester from underbidding the awardee. Since the government had no part in selecting the subcontractors or in the subcontractors' actions, the matter essentially involves a dispute between private parties, and is not a matter to be resolved through the protest process.

3. Contracting agency may not consider a bid modification that is offered by the protester on the day after bid opening, where the modification would reduce the protester's price and displace the low bidder's bid.

DECISION

AJM Custom Built Inc. protests award of a construction contract to Danville-Findorff, Inc., by the United States Customs Service pursuant to invitation for bids (IFB) No. CS-89-020. AJM contends that the time allowed for preparation of its bid was insufficient and that there was collusion among the potential subcontractors from which it solicited bids for subcontract work to prevent AJM from submitting a competitive bid. We dismiss the protest in part and deny it in part.

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The contract requires Danville-Findorff to complete construction of a building that was begun by another contractor, C. Ardavin Construction Company, under a contract awarded as part of the Small Business Administration's section 8(a) set-aside program. Ardavin experienced a number of inexcusable delays that ultimately resulted in the termination of its contract for default. The present IFB, for completion of the approximately 28 percent remaining construction, was issued on October 31, 1988, on a restricted basis to selected contractors due to the unusual and compelling urgency of the requirement.

On the November 30, the bid opening date, three bids were received as follows:

Bidder	Amount
Danville-Findorff	\$3,218,775
AJM Custom Built	3,307,577
Stoller, Fried, Zeypher	4,875,000

Accordingly, the contract was awarded to Danville-Findorff, the lowest-priced, responsive, responsible bidder, on December 8.

By letter dated January 4, 1989, AJM filed a protest with the contracting officer making the very general allegation that there were irregularities in the bidding process that resulted in AJM offering only the second lowest, rather than the lowest, bid. AJM states that its protest was orally denied by the contracting officer on January 6, at which time AJM was also notified that the Customs Service intended to have Danville-Findorff complete construction of the project. On January 10, AJM filed its protest in our Office.

AJM first contends that it was unable to submit a winning bid because of the short time period afforded it to prepare its bid. The IFB originally required a \$6 million bid bond. According to AJM, the bond required was too high for a contract of this size and prohibited AJM from bidding. By amendment dated November 17, the amount of the bid bond required was reduced to \$2 million, and AJM states that it was able to participate in the competition. However, as bid opening was scheduled for November 30, AJM asserts that it was placed at "a severe disadvantage because of the limited time remaining to put together and submit an accurate bid."

To the extent that AJM contends that the time period between the amendment lowering the bid bond requirement and bid opening was too short, the protest is untimely. Our Bid

Protest Regulations require that protests alleging improprieties in a solicitation which are apparent prior to bid opening must be filed before bid opening. 4 C.F.R. § 21.2(a)(1) (1988). If AJM believed that there was insufficient time for it to prepare a competitive bid, AJM had adequate time after receipt of the November 17 amendment to file a bid protest with either the contracting officer or our Office before the November 30 bid opening. Instead, AJM waited until well after the bids were opened and AJM knew that it had lost the competition before protesting that there was too little time allotted for bid preparation. See Washington Patrol Service, Inc., B-228180, Sept. 30, 1987, 87-2 CPD ¶ 317. Therefore, we will not consider this protest issue.

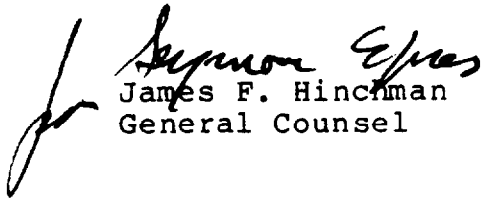
AJM next argues that most of the firms from which it solicited quotes for subcontract work were in collusion with Danville-Findorff to ensure that Danville-Findorff, rather than AJM, won the competition. In support of this allegation, AJM points out that almost all of the potential subcontractors submitted their quotes to AJM within a very short time period just 1 day before bid opening. AJM also contends that most of the quotes it received were "highly inflated." Finally, AJM singles out the electrical subcontractor as having provided AJM with a quotation that was much higher than AJM expected. Yet, AJM states that this same subcontractor approached AJM after the contract had been awarded to Danville-Findorff with an offer to perform the electrical work for AJM at a significant discount if Danville-Findorff's contract was terminated for default and AJM was awarded the prime contract to perform the remainder of the work.

The protester's allegation that various potential subcontractors may have engaged in collusive activities in order to prevent AJM from underbidding Danville-Findorff does not fall within our bid protest function. See Monarch Engineering Co., B-218374, June 21, 1985, 85-1 CPD ¶ 709. Clearly, the government had no part in AJM's decision to solicit quotations from particular subcontractors nor in AJM's decision to formulate its bid price based upon subcontractor quotes that AJM believed were excessively high. Therefore, the matter involves a dispute between private parties for resolution through litigation, not the bid protest process. See Blair Electrical Construction, Inc., B-225582.2, Jan. 13, 1987, 87-1 CPD ¶ 55.

Finally, AJM contends that it should be awarded the contract because, by letter of December 1, 1988, it offered to lower its price by \$171,000. AJM states that it was able to reduce its total price, because it received several

additional quotations from potential subcontractors at lower prices than those previously quoted by the subcontractors AJM used in preparing its bid. Thus, AJM argues that the price reduction offered made its bid the lowest bid submitted, and the Customs Service should have accepted AJM's revised offer. We do not agree. As AJM's attempted modification of its bid was made on December 1, the day after bid opening, the offered price reduction properly could not be considered by the Customs Service. See W.H. Smith Hardware Co., B-224573, Nov. 12, 1986, 86-2 CPD ¶ 555. Therefore, this protest argument is denied.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel